

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

STEVEN SALAITA,

Plaintiff,

v.

CHRISTOPHER KENNEDY, Chairman of the Board of Trustees of the University of Illinois; RICARDO ESTRADA, Trustee of the University of Illinois; PATRICK J. FITZGERALD, Trustee of the University of Illinois; KAREN HASARA, Trustee of the University of Illinois; PATRICIA BROWN HOLMES, Trustee of the University of Illinois; TIMOTHY KORITZ, Trustee of the University of Illinois; EDWARD L. MCMILLAN, Trustee of the University of Illinois; PAMELA STROBEL, Trustee of the University of Illinois; ROBERT EASTER, President of the University of Illinois; CHRISTOPHE PIERRE, Vice President of the University of Illinois; PHYLLIS WISE, Chancellor of the University of Illinois at Urbana-Champaign; THE BOARD OF TRUSTEES OF ILLINOIS; and JOHN DOE UNKNOWN DONORS TO THE UNIVERSITY OF ILLINOIS,

Defendants.

Case No. 15-cv-00924

Honorable Harry D. Leinenweber

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)**

Pursuant to Fed. R. Civ. P. 12(b), Christopher Kennedy, Ricardo Estrada, Patrick J. Fitzgerald, Karen Hasara, Patricia Brown Holmes, Timothy Koritz, Edward L. McMillan, and Pamela Strobel (the "Trustees"), Robert Easter, Christophe Pierre, and Phyllis Wise (the "Administrators"), and The Board of Trustees of the Illinois (the "Board") (collectively, "Defendants"), respectfully move the Court to dismiss this action for the Plaintiff's failure to state a claim upon which relief can be granted and for lack of jurisdiction. For the following reasons, as well as those in the Memorandum in Support ("Supporting Memorandum"), which is filed

concurrently with this Motion and incorporated herein by reference, Defendants move to dismiss the Complaint with prejudice.

1. In the Complaint, Plaintiff alleges First Amendment retaliation in violation of 42 U.S.C. § 1983 against the Trustees and Administrators (Count I), a procedural due process claim pursuant to 42 U.S.C. § 1983 against the Trustees and Administrators (Count II), conspiracy in violation of 42 U.S.C. §§ 1983 and 1985 against all Defendants (Count III); promissory estoppel against the Board (Count IV); breach of contract against the Board (Count V); tortious interference with contractual and business relations against John Doe Unknown Donors (Counts VI and VII); intentional infliction of emotional distress against all Defendants (Count VIII); and spoliation of evidence against Chancellor Wise (Count IX). In each instance, Plaintiff fails to state a claim and the Complaint must be dismissed in its entirety.

2. First, the breach of contract and promissory estoppel claims fail because there was no binding contract and there was no “unambiguous promise” by the University upon which Plaintiff could reasonably rely.

3. Second, Plaintiff’s civil rights claims fail to state a cause of action because Plaintiff fails to make specific allegations against the Trustees and Administrators, and the University properly balanced Plaintiff’s interest in making his inflammatory statements against the University’s interest in providing a safe and efficient educational environment. Further, Plaintiff was not denied due process because he did not have a property interest in a faculty position, has not alleged that Defendants’ actions have made it impossible for him to find employment in his field, and has failed to allege an actionable agreement among Defendants.

4. Third, Plaintiff’s various tort claims under state law – tortious interference with contract, tortious interference with business relations, intentional infliction of emotional distress, and spoliation – each fail to establish the elements necessary to plead any of these causes of action.

5. Finally, even if Plaintiff were able to state a claim, which he cannot, the Court lacks subject matter jurisdiction over the Board and the Trustees and Administrators in their official capacities based on the doctrine of sovereign immunity, and the Trustees and Administrators are entitled to qualified immunity in their individual capacities.

6. Accordingly, the claims brought against Defendants must be dismissed as Plaintiff cannot state a claim with regard to any of the causes of action asserted.

WHEREFORE, for these reasons and those set forth in Defendants' Supporting Memorandum, Defendants respectfully request that the Court enter an order dismissing this action, with prejudice, and granting any such other just and equitable relief .

Dated: February 25, 2015

Respectfully submitted,

By: /s/ Christopher B. Wilson
One of Their Attorneys

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Phyllis Wise, The Board of Trustees of the University of Illinois*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **MOTION** was served upon all counsel of record this 25th day of February, 2015 via the Case Management/Electronic Case Filing (“CM/ECF”) System.

/s/ Christopher B. Wilson